

Department of the Navy, DoD

§ 701.25

courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(3) Computer software, the release of which would allow circumvention of a statute or Department of the Navy rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be closely examined to ensure the possibility of circumvention exists.

(4) Security classification guides.

(b) Records qualifying under the low (b)(2) profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records. Examples include, rules of personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and trivial administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communication, and other like administrative markings.

§ 701.25 Exemption (b)(3).

Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or under criteria established by that statute for withholding or referring to particular types of matters to be withheld. Authorization or requirement may be found in the statute itself or in Executive orders or regulations authorized by, or in implementation of a statute. Examples include:

(a) National Security Agency Information Exemption, Pub. L. 86-36, Section 6.

(b) Confidentiality of identity of employee who complains to the IG (5 U.S.C. App., Inspector General Act of 1978, section 7).

(c) Ethics in Government Act of 1978—Protecting Financial Disclosure Reports of Special Government Employees (5 U.S.C. App., Ethics in Government Act of 1978, section 207(a) (1) and (2)).

(d) Civil Service Reform Act—Representation Rights and Duties, Labor Unions, 5 U.S.C. 7114(b)(4).

(e) Authority to Withhold Unclassified Special Nuclear Weapons Information, 10 U.S.C. 128. This statute prohibits the unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material.

(f) Authority to Withhold Unclassified Technical Data with Military or Space Application, 10 U.S.C. 130.

(g) Action on Reports of Selection Boards, 10 U.S.C. 618.

(h) Confidentiality of Medical Quality Records: Qualified Immunity Participants, 10 U.S.C. 1102.

(i) Confidentiality of Financial Records, 12 U.S.C. 3403.

(j) Communication Intelligence, 18 U.S.C. 798.

(k) Confidential Status of Patent Applications, 35 U.S.C. 122.

(l) Secrecy of Certain Inventions and Withholding of Patents (specific applicable section(s) must be involved, 35 U.S.C. 181 through 188.

(m) Confidentiality of Invention Information, 35 U.S.C. 205.

(n) Procurement Integrity, 41 U.S.C. 423.

(o) Confidentiality of Patient Records, 42 U.S.C. 290dd-2.

(p) Information regarding Atomic Energy: Restricted and Formerly Restricted Data (Atomic Energy Act of 1954), specific applicable exemptions must be invoked (*e.g.*, 42 U.S.C. 2161 through 2168).

(q) Protection of Intelligence Sources and Methods, 50 U.S.C. 403(d)(3).

(r) Protection of identities of US undercover intelligence officers, agents, informants and sources, 50 U.S.C. 421.

(s) Examples of statutes which DO NOT qualify under exemption (b)(3) include: 5 U.S.C. 552a, Privacy Act; 17 U.S.C. 101 *et seq.*, Copyright Act; 18 U.S.C. 793, Gathering, Transmitting or Losing Defense Information to Aid Foreign Governments; 18 U.S.C. 1905, Trade Secrets Act; and 28 U.S.C. 1498, Patent and Copyright Cases.

[56 FR 66574, Dec. 24, 1991, as amended at 59 FR 29722, June 9, 1994]